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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUN 14 1997

In the Matter of:

Policies and Rules Pertaining to
Local Exchange Carrier "Freezes"
on Consumer Choices of Primary
Local Exchange or Interexchange
Carriers

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File No. CCB/CPD 97-19

RM-9085

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys,
respectfully submits the following comments in support of the Petition for Rulemaking filed
by MCI Telecommunications Corporation ("MCI") on March 18, 1997.¹

I. INTRODUCTION AND SUMMARY

MCI asks the Commission to adopt rules governing the solicitation of "freeze" orders
restricting the change of a customer's interLATA or intraLATA primary interexchange
carrier ("PIC") and/or of its local exchange carrier. MCI asserts that although these PIC
freezes² are defended by incumbent local exchange carriers ("ILECs") as protection against
the unauthorized conversion of a customer's service (known as "slamming"), they are being

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¹ See Public Notice, DA 97-942 (rel. May 5, 1997).

² CompTel uses the term "PIC freeze" to refer to any restriction that limits the available
methods for submitting carrier change requests. In addition, the term will be used to refer to
changes in a customer's interexchange (interLATA or intraLATA) PIC and also to its local
exchange carrier, even though a customer does not have a local "PIC."

used by ILECs for anticompetitive purposes.³ It describes several examples of biased policies and misleading solicitations adopted by ILECs just as competition in local and intraLATA services was, or was about to be, introduced.⁴ MCI claims that these recent PIC freeze practices are unjust and unreasonable and asks the Commission to adopt rules prohibiting them.⁵

CompTel agrees with MCI that the Commission should act promptly to prohibit ILEC manipulation of the carrier selection process. In recent months, PIC freezes have become the vehicle of choice for incumbent local exchange carriers to foreclose competition in intraLATA and local services by locking in their own customers before they even have a competitive alternative. PIC freezes make it more difficult for competitors to submit orders after a customer has given his or her authorization for a switch. Often, a carrier has to contact a customer two or more times to implement a conversion because ILECs refuse to tell carriers in advance which customers have PIC freezes on their accounts. Some ILECs also discriminate against competitors by offering PIC freezes only for their own customers but not for customers presubscribed to other carriers. One ILEC has even used the PIC freeze as a way to ensure it could make one final solicitation to convince customers not to switch to another carrier. Examples such as these confirm that ILECs are not disinterested administrators processing customer requests but active competitors willing to use any available advantage to shield their markets from competition. With the U.S. at the earliest stages of emerging competition in local and intraLATA services, it is imperative that the

³ MCI Petition at 1-2.

⁴ *Id.* at 5-6.

⁵ *Id.* at 8-9.

Commission act decisively to prevent ILECs from subverting the mandate of the Telecommunications Act of 1996 through unjust and unreasonable PIC freeze practices.

CompTel believes two actions are essential. First, the Commission should issue a declaratory ruling prohibiting ILECs from soliciting PIC freezes for intraLATA and local exchange services not subject to competition today. PIC freezes are inherently unreasonable when a customer has no choice in alternative carriers. There is no PIC to freeze in such cases. To protect the transition to competition, the Commission should immediately declare that the solicitation or enforcement of PIC freezes during the first six months after competition is introduced also is an unjust and unreasonable practice under Section 201(b) of the Act, 47 U.S.C. § 201(b). Second, the Commission should initiate a rulemaking to establish the future ground rules for ILEC PIC change practices, including PIC freezes and any other procedures imposed by ILECs on the submission or processing of carrier selection orders (whether interLATA, intraLATA or local). The Commission must ensure that the PIC process promotes competition while it preserves customer choice.

II. ILECs ARE ABUSING THE PIC PROCESS

No longer can the Commission presume that ILECs are neutral administrators of customer PIC change requests. With the advent of intraLATA presubscription in many states, ILECs compete directly with other carriers for PIC selections. GTE and other independent ILECs already compete in the interLATA market, and the Regional Bell Operating Companies ("RBOCs") have begun to submit applications requesting interLATA authority also. Moreover, as incumbent ILECs begin to implement critical aspects of the Telecommunications Act of 1996, local carrier selection may soon be an option. In all of

these markets, the ILECs either compete or will compete with other carriers for presubscription and local carrier selection.

ILECs often have responded with PIC freeze practices designed to thwart their competitors. MCI's petition describes a SNET "Carrier Choice Protection" that it offers only to customers seeking to freeze their PIC to SNET.⁶ NYNEX required PIC frozen customers in New York to participate on a three-way call among the customer, NYNEX and the IXC, ostensibly to "verify" the customer's selection of a different carrier. In fact, however, NYNEX used the verification to attempt to resell the customer to NYNEX's services.⁷

In December 1995, Ameritech sent a billing insert to all of its customers promoting a "Prohibit PIC Change" program to "stop unauthorized changes to your long-distance phone service." Although Ameritech had offered a PIC freeze option for nearly a decade, this mailing -- its first mass solicitation for the program -- was timed to coincide with the implementation of intraLATA presubscription in Illinois, Michigan, and Wisconsin.⁸ In addition, for each customer responding to the mailing, Ameritech applied a PIC freeze to the customer's interLATA, intraLATA and local service carrier selection. The state commissions of Michigan and Illinois, and an Attorney Examiner in Ohio all have concluded

⁶ MCI Petition at 6-7.

⁷ *Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgment and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State, et al.*, 1996 N.Y. PUC LEXIS 460 (N.Y. P.S.C. August 15, 1996).

⁸ Indeed, this mailing was prepared by Ameritech's marketing department, and "spearheaded" by Ameritech's intraLATA toll marketing manager. *Complaint of Sprint Communications Company, L.P. v. Ameritech Ohio*, Attorney Examiner's Report, 1997 OHIO PUC LEXIS 119, *52 (February 20, 1997) (*Ohio Examiner's Report*).

that Ameritech's bill insert was misleading and anticompetitive.⁹ As the Michigan Commission explained, Ameritech's bill insert was "anticompetitive because it created new hurdles to the exercise of the customer's decision to change providers just as alternatives were becoming available."¹⁰

Moreover, as MCI describes in its Petition, ILECs do not inform other carriers in advance which customers have implemented PIC freezes (although they often provide this information to their own marketing personnel), and the process to override a PIC freeze can be cumbersome and ineffective.¹¹ Often, a carrier will find out about a PIC freeze only after submitting an order. By that time, its marketing contact with the customer has ended, and it must re-contact the customer to re-submit an order through different procedures. This process adds significant cost and expense to carrier marketing efforts. The result is a disruption of legitimate carrier marketing activities and unnecessary burdens on customers seeking to change carriers.

III. THE COMMISSION SHOULD ACT PROMPTLY TO RESTORE COMPETITIVE NEUTRALITY TO CARRIER SELECTION PROCESSES

The preceding examples show that immediate action is necessary to ensure that all carrier selection processes promote competition while protecting customer choice. CompTel

⁹ *MCI Telecommunications Corporation et al. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois*, 1996 Ill. PUC LEXIS 205 (Ill. Commerce Comm'n Apr. 3, 1996); *Sprint Communications Company L.P v. Ameritech Michigan*, 1996 Mich. PSC LEXIS 259 (Mich. PSC August 1, 1996); *Ohio Examiner's Report*.

¹⁰ *Sprint Communications Company L.P.*, 1996 Mich. PSC LEXIS 259, *20; *see also*, *Ohio Examiner's Report*, 1997 Ohio PUC LEXIS 119, *51 ("The examiner finds that the only reasonable explanation for Ameritech to apply [the PIC freeze] to the intraLATA and local service markets in Ohio . . . to be the retention of market share").

¹¹ MCI Petition at 7.

recommends that the Commission take two actions to restore competitive neutrality to the PIC process.

First, the Commission should on its own motion issue an immediate declaratory ruling that PIC freezes for intraLATA or local carrier selection are unjust and unreasonable practices. Only a few states have begun to implement intraLATA presubscription, and local carrier selection is not yet a reality. Because these markets are not subject to competition, it is inherently unreasonable to "freeze" the customer's selection. Where customers do not have alternative choices, slamming is an impossibility and no carrier change "protection" is necessary. The only conceivable purpose for such freezes is to lock in (or "vault") these customers to impede the introduction of competition. The protection that consumers need in such cases is not from slamming, but from ILEC actions to limit the consumer's ability to take advantage of new competitive choices. The Commission therefore should issue an immediate declaratory ruling prohibiting ILECs from soliciting PIC freezes for intraLATA and local exchange services not subject to competition today. To protect the transition to competition, the Commission also should declare that the solicitation or enforcement of PIC freezes during the first six months after competition is introduced is unjust and unreasonable. This six month "fresh look" period is appropriate to allow customers to consider without hinderance the new alternatives that become available to them.

Second, the Commission should grant the MCI petition and initiate a rulemaking to address future ILEC PIC change practices, including PIC freezes and any other procedures imposed by ILECs on the submission or processing of carrier selection orders (whether interLATA, intraLATA or local). The Commission must adopt rules that ensure the carrier

selection process is administered in a competitively neutral manner and that it promotes competition while protecting informed customer choice.

Toward this end, the Commission should consider rules governing the procedures to implement a PIC freeze and to override the freeze once it is in place. In addition, the Commission should consider mandatory and competitively neutral language for a PIC freeze to ensure that consumers are aware of their alternatives and the significance of their action. Further, CompTel believes regulations are necessary to ensure that access to information concerning whether a customer account is PIC frozen is made available to all carriers on nondiscriminatory terms and conditions.

CompTel is aware that the Commission's Common Carrier Bureau found two ILECs' procedures for processing payphone PIC changes to be "consistent with the Commission's PIC change rules and orders."¹² Although the Bureau suggested in that order that nothing in its PIC change rules precluded ILECs from developing procedures for processing payphone PIC changes, so long as they did not conflict with the PIC change rules,¹³ CompTel submits that this determination was made while the ILECs involved were prohibited from participating in payphone presubscription, and the apparent *laissez faire* approach makes sense only when the ILEC is a disinterested administrator, not when it is an active competitor in the market. Moreover, the Bureau "strictly limited" its order to the payphone processing procedures described therein, and noted that Section 258 of the Act now makes it unlawful for any carrier (including ILECs) to "submit *or execute*" change orders in

¹² *RCI Long Distance, Inc. v. New York Telephone Company et al.*, 11 FCC Rcd 8090 (CCB 1996).

¹³ *Id.* ¶ 13.

violation of the FCC's rules.¹⁴ Section 258 and the ILECs' increasing interest in influencing carrier selections require the Commission to take action to regulate ILEC procedures for the submission and processing of PIC changes.

IV. CONCLUSION

For the foregoing reasons, CompTel supports MCI's Petition for Rulemaking. The Commission should initiate a proceeding to regulate ILEC practices governing the submission and processing of carrier selection orders (including PIC freezes). Rules are necessary to ensure that ILECs do not abuse the PIC change process to gain a competitive advantage and to thwart the development of competition in local and intraLATA markets. In addition, the Commission should on its own motion issue an immediate declaratory ruling that PIC freezes for intraLATA and local services are unjust and unreasonable practices at this time. ILECs

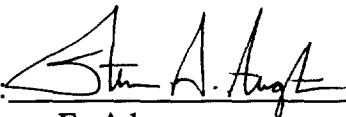
¹⁴ *Id.*, ¶¶ 20-21.

should be precluded from soliciting or enforcing such PIC freezes until at least six months after competition is introduced in each market.

Respectfully submitted,

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June 4, 1997

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION to be delivered on this 4th day of June, 1997 by hand delivery to all parties listed on the attached service list:



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